

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b> <b>MMA LAW FIRM, PLLC</b>  <b>DEBTOR(S)</b>	§ § § § §	<b>CASE NO. 24-31596</b>  <b>CHAPTER 11</b>
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**MOTION FOR RELIEF FROM THE STAY**  
**TO PURSUE INSURANCE PROCEEDS**  
**(with variance per below)**

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF YOU OBJECT TO THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY, YOU SHOULD CONTACT THE MOVANT IMMEDIATELY TO TRY TO REACH AN AGREEMENT. IF YOU CANNOT REACH AN AGREEMENT, YOU MUST FILE A WRITTEN RESPONSE AND SEND A COPY TO MOVANT **NO LATER THAN 7 DAYS BEFORE THE DATE OF THE HEARING** AND YOU MUST ATTEND THE HEARING.

THE COPY SENT TO THE MOVANT MUST BE DELIVERED BY HAND OR ELECTRONIC DELIVERY IF IT IS SENT LESS THAN FIVE BUSINESS DAYS PRIOR TO THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE HEARING MAY BE AN EVIDENTIARY HEARING AND THE COURT MAY GRANT OR DENY RELIEF FROM THE STAY BASED ON THE EVIDENCE PRESENTED AT THIS HEARING. IF A TIMELY OBJECTION IS FILED, THE COURT WILL CONDUCT A HEARING ON THIS MOTION ON **NOVEMBER 4, 2024 AT 1:30 P.M. IN THE COURTROOM OF THE HONORABLE JUDGE EDUARDO RODRIGUEZ, COURTROOM #8B, 515 RUSK AVENUE, HOUSTON, TX 77002.**

1. This Motion requests an Order from the Bankruptcy Court authorizing the person filing this Motion to foreclose on or to repossess the property that is identified in paragraph 3. *(Or in this case proceed against insurance proceeds Movant believes are third-party proceeds).*
2. Movant: MAKKAH CORPORATION D/B/A HABIBI SHRINERS, ITS CLUBS AND UNITS
3. Movant, directly or as agent for the holder, holds claim against the Debtor's MALPRACTICE INSURANCE via suit filed in the 14<sup>th</sup> Judicial District Court for the Parish of Calcasieu, State of Louisiana, on August 3, 2023 Case No. 2023-2874 styled *MAKKAH CORPORATION D/B/A HABIBI SHRINERS, ITS CLUBS AND UNITS VERSUS MCCLENNY MOSELEY & ASSOCIATES, PLLC, MMA LAW FIRM, PLLC, R. WILLIAM HUYE, III, CLAUDE F. REYNAUD, III, CAMERON SNOWDEN, GRANT GARINDER AND ABC INSURANCE COMPANY* (the "Lawsuit").
4. Movant has reviewed the schedules filed in this case. The property described in paragraph 3 is not claimed as exempt by the debtor. Movant does not contest the claimed exemption.
5. Type of collateral (e.g., Home, Manufactured Home, Car, Truck, Motorcycle):  
MALPRACTICE INSURANCE PROCEEDS

6. Debtor's scheduled value of property: \$0.00. DK# 13, p. 17.
7. Movant's estimated value of property: \$3,000,000.00.
8. Total amount owed to Movant: \$200,000.00.
9. Estimated equity (paragraph 7 minus paragraph 8): \$2,800,000.00.
10. Total pre and post-petition arrearages: \$200,000.00
11. Total post-petition arrearages: n/a.
12. Amount of unpaid, past due property taxes, if applicable: n/a.
13. Expiration date on insurance policy, if applicable: n/a.
14. X Movant seeks relief based on the Debtor(s) failure to make payments. Debtor(s)' payment history is attached as Exhibit "A." Movant represents that the attached payment history is a current payment history reflecting all payments, advances, charges and credits from the beginning of the loan. Movant further represents that the payment history is self-explanatory or can be interpreted by application of coding information that is also attached. Movant acknowledges that the Court may prohibit the use of parol evidence to interpret a payment history that does not satisfy these representations.

**VARIANCE:** On information and belief, Debtor holds liability insurance up to \$3,000,000.00. Movant has claims against Debtor it believes are insured by the liability insurance. On March 26, 2024, Movant agreed to settle those claims with Debtor's liability insurance carrier, Allied World Insurance Company ("Allied"), for amount agreed. Debtor filed the instant case April 9, 2024.

Allied previously moved to lift the automatic stay in this case July 26, 2024 (DK# 205) for the purposes of utilizing insurance proceeds to settle certain claims, including Movant's. Debtor objected August 19, 2024 (DK# 248).

At hearing August 26, 2024, it appears the crux of the pertinent question was whether claims against the liability insurance exceed the policy limits such that the liability insurance might become property of the bankruptcy estate.

At this time, there is no evidence that any viable malpractice claims against the Debtor will exceed policy limits. This case has been pending for six (6) months, yet no action has been taken to bring such proceeds into the estate. Debtor has valued the policy at \$0, indicating no interest owned by the Debtor. Allied's Motion for Relief from Stay listed only eight (8) lawsuits pending against MMA that appear under the insurance policy in question.

**Burden of Proof of Estate Property is on the Debtor in Possession:**

To the extent the Debtor argues the insurance proceeds are property of the estate, the burden then falls upon the Debtor as a Debtor in Possession to show the proceeds are property of the estate. **“The party seeking to include property in the estate bears the burden of showing that the item is property of the estate.”** *TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)* 764 f.3d 512, 524 (5<sup>th</sup> Cir.2014). Absent a clear showing the insurance proceeds are property of the estate, Movant requests relief from stay (or comfort order confirming stay does not apply) to pursue third party insurance proceeds of Allied World Insurance Corp.

15. \_\_\_\_\_ Movant seeks relief based on the Debtor(s)’ failure to provide certificate of insurance reflecting insurance coverage as required under the Debtor’s pre-petition contracts.
16. If applicable: Name of Co-Debtor:
17. Based on the foregoing, Movant seeks termination of the automatic stay and the Co-Debtor stay, if applicable to allow Movant to foreclose or repossess the Debtor(s)’ property and seeks to recover its costs and attorneys’ fees in an amount not to exceed the amount listed in paragraph 9.
18. Movant certifies that prior to filing this Motion an attempt was made to confer with the Debtor’s counsel by email September 23, 2024 and by phone on or about September 25, 2024. An agreement could not be reached. If requested by Debtor or Debtor’s counsel, a payment history in the form attached to this Motion was provided at least two business days before this Motion was filed.

Date: October 9, 2024

Respectfully submitted:

/s/ Michael Weems

Movant’s Counsel Signature

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ATTORNEY FOR MOVANT

**Certificate of Service and Certificate of Compliance with BLR 4001**

A copy of this motion was served on the persons shown below at the addresses reflected on the 9<sup>th</sup> day of October, 2024 by electronic mail or by prepaid United States first class mail. Movant certifies that Movant has complied with Bankruptcy Local Rule 4001.

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